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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 YUNAE CHI, Derivatively on
12 Behalf of Herself and All Others
13 Similarly Situated,

14 Plaintiff,

15 v.

16 MARK E. ZUCKERBERG, JAMES
17 W. BREYER, PETER A. THIEL,
18 MARC L. ANDREESSEN,
19 ERSKINE B. BOWLES, DONALD
20 E. GRAHAM, and REED
HASTINGS.,

21 Defendants,

22 -and-

23 FACEBOOK, INC.,

24 Nominal Defendant.
25
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Case No.

CLASS ACTION

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiff Yunae Chi, by and through her attorneys, brings this action
2 derivatively on behalf of nominal defendant Facebook, Inc. ("Facebook" or the
3 "Company") and alleges upon personal knowledge as to herself and her own acts,
4 and as to all other matters based upon the investigation conducted by her
5 attorneys which included, among other things, a review of Securities and
6 Exchange Commission ("SEC") filings, documents, analyst reports, news reports,
7 press releases, and other publicly available information regarding the Company,
8 as follows:.

12 NATURE AND SUMMARY OF THE ACTION

13 1. This is a shareholder derivative action brought on behalf of the
14 Company. The complaint seeks relief against the Facebook Board of Directors
15 (the "Board"), consisting of Defendants Mark E. Zuckerberg, James W. Breyer,
16 Peter A. Thiel, Marc L. Andreessen, Erskine B. Bowles, Donald E. Graham, and
17 Reed Hastings (collectively the "Individual Defendants"), to remedy breaches of
18 their fiduciary duties in connection with the Initial Public Offering ("IPO") of
19 Facebook common stock, which took place on May 18, 2012.

20 2. After the IPO occurred, Facebook's stock price dropped precipitously.
21 On May 22, 2012, it was discovered that Facebook had, shortly before the IPO,
22 selectively and verbally disseminated material information to its underwriters, who
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1 in turn verbally disseminated such information to select institutional investors, *i.e.*
2 that Facebook was lowering previously announced guidance.

3
4 3. As a result of this news, the stock price plummeted, and Facebook is
5 now subject to various lawsuits and governmental and regulatory investigations,
6 and has suffered significant reputational harm. The Board breached their fiduciary
7 duties by failing to take steps to prevent this conduct from occurring. Furthermore,
8 the board cannot be expected to act on Facebook's behalf in a disinterested and
9 independent manner, because, as Columbia Law School Professor John Coffee
10 stated, "[p]retending that Facebook will have an independent board ... is like
11 putting rouge on a corpse."
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14

15 JURISDICTION AND VENUE

16 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as
17 plaintiff and defendants are citizens of different states and the amount in
18 controversy exceeds \$75,000, exclusive of interests and costs. This action is not a
19 collusive action designed to confer jurisdiction on a court of the United States that
20 it would not otherwise have.
21
22

23 5. Venue is proper in this Court pursuant to Section 27 of the Exchange
24 Act and 28 U.S.C. 1391(a)(I) because: (1) a substantial portion of the transactions
25 and wrongs complained of herein, including the improper dissemination of
26 financial information by Facebook's underwriters and/or institutional investors,
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1 occurred within this Judicial District, and (2) Defendants have received substantial
2 compensation by engaging in numerous activities that have had an effect in this
3 Judicial District.
4

5 PARTIES

6 6. Plaintiff Yunae Chi purchased shares of Facebook common stock on
7 the IPO, and has held these shares continuously since the alleged conduct occurred.
8 Plaintiff is a resident of Orange County, California. See Sworn Certification of
9 Plaintiff attached hereto as Exhibit A.
10
11

12 7. Nominal Defendant Facebook is a social media company that is
13 incorporated in Delaware and headquartered at 601 Willow Road, Menlo Park,
14 California.
15

16 8. Defendant Mark E. Zuckerberg is the Chairman of the Board and
17 Chief Executive Officer of Facebook. He has been Chief Executive Officer and a
18 Director since July 2004. Zuckerberg has served as Chairman of the board of
19 directors since January 2012. Zuckerberg is a resident of California.
20
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22 9. Defendant James W. Breyer has been a director since April 2005.
23 Breyer has been a Partner of Accel Partners, a venture capital firm, since 1987, and
24 currently serves as President of Accel Management Co., Inc. Breyer is a resident
25 of California.
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1 10. Defendant Peter A. Thiel has been a director since April 2005. Since
2 2005, Thiel has been a Partner of Founders Fund, a venture capital firm. Thiel has
3 also served as President of Clarium Capital Management, LLC, a global macro
4 investment manager, since 2002. Thiel is a resident of California.
5

6 11. Defendant Marc L. Andreessen has been a director since June 2008.
7 Andreessen is a co-founder and has been a General Partner of Andreessen
8 Horowitz, a venture capital firm, since July 2009. Andreessen is a resident of
9 California.
10

11 12. Defendant Erskine B. Bowles has been a director since September
12 2011. Bowles is President Emeritus of the University of North Carolina and
13 served as resident from January 2006 through December 2010. Bowles has also
14 been a Senior Advisor of BDT Capital Partners, LLC, a private investment firm,
15 since January 2012. Bowles currently serves as a member of the boards of
16 directors of Morgan Stanley, Belk, Inc., and Norfolk Southern Corporation.
17 Bowles is a resident of North Carolina.
18

19 13. Defendant Donald E. Graham is the "Lead Independent Director."
20 Graham has served as the Chief Executive Officer of The Washington Post
21 Company, an education and media company, since 1991 and as Chairman of its
22 board of directors since 1993. Graham is a resident of the District of Columbia.
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1 14. Defendant Reed Hastings has been a director since June 2011.
2 Hastings has served as the Chief Executive Officer and Chairman of the board of
3 directors of Netflix, Inc., a provider of an Internet subscription service for movies
4 and television shows, since 1999. Hastings is a resident of California.
5

6 **DUTIES OF THE INDIVIDUAL DEFENDANTS**
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8 15. By reason of their positions as officers and directors of the Company,
9 and because of their ability to control the business and corporate affairs of the
10 Company, the Individual Defendants owed the Company and its shareholders the
11 fiduciary obligations of good faith, trust, loyalty, and due care, and were, and are,
12 required to use their utmost ability to control and manage the Company in a fair,
13 just, honest, and equitable manner. The Individual Defendants were, and are,
14 required to act in furtherance of the best interests of the Company and its
15 shareholders so as to benefit all shareholders equally and not in furtherance of their
16 personal interest or benefit.
17
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19

20 16. Each director and officer of the Company owes to Facebook and its
21 shareholders the fiduciary duty to exercise good faith and diligence in the
22 administration of the affairs of the Company and in the use and preservation of its
23 property and assets, and the highest obligations of fair dealing. In addition, as
24 officers and directors of a publicly held company, the Individual Defendants had a
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1 duty to promptly disseminate accurate and truthful information with regard to the
2 Company.

3
4 17. The Individual Defendants, because of their positions of control and
5 authority as directors and/or officers of Facebook, were able to and did, directly
6 and/or indirectly, exercise control over the wrongful acts complained of herein, as
7 well as the contents of the various public statements issued by the Company.
8 Because of their executive, managerial and directorial positions with Facebook,
9 each of the Individual Defendants had access to adverse, non-public information
10 about the unlawful conduct alleged herein.
11

12
13 18. At all times relevant hereto, each of the Individual Defendants was the
14 agent of the other Individual Defendants and of Facebook, and was at all times
15 acting within the course and scope of such agency.
16

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18 19. To discharge their duties, the officers and directors of Facebook were
19 required to exercise reasonable and prudent supervision over the management,
20 policies, practices and controls of the financial affairs of the Company. By virtue
21 of such duties, the officers and directors of Facebook were required to, among
22 other things:
23

- 24
25 a. manage, conduct, supervise and direct the business affairs of
26 Facebook in accordance with all applicable laws, rules, and
27 regulations;
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- 1 b. neither violate nor knowingly permit any officer, director or
2 employee of Facebook to violate applicable laws, rules, and
3 regulations;
4
- 5 c. neither engage in self-dealing nor knowingly permit any officer,
6 director or employee of Facebook to engage in self-dealing;
7
- 8 d. ensure that the Company complied with its legal obligations
9 and requirements, including acting only within the scope of its
10 legal authority and disseminating truthful and accurate
11 statements to the investing public;
12
- 13 e. conduct the affairs of the Company in an efficient, business-like
14 manner so as to make it possible to provide the highest quality
15 performance of its business, to avoid wasting the Company's
16 assets, and to maximize the value of the Company's stock;
17
- 18 f. properly and accurately guide investors and analysts regarding
19 the true financial condition of the Company at any given time,
20 including making accurate statements about the Company's
21 financial results and prospects, and ensuring that the Company
22 maintained an adequate system of financial controls such that
23 the Company's financial reporting would be true and accurate
24 at all times;
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1 g. preserve and enhance Facebook's reputation as a publicly-
2 traded company, and to maintain public trust and confidence in
3 Facebook as a prudently managed corporate entity fully capable
4 of meeting its duties and obligations, including its public
5 reporting obligations;
6

7
8 h. remain informed of how Facebook conducted its operations,
9 and, upon receipt of notice or information of imprudent or
10 unsound conditions or practices, to make reasonable inquiry in
11 connection therewith, and to take steps to correct such
12 conditions or practices and make such disclosures as necessary
13 to comply with applicable laws and regulations.
14
15

16 20. Each Individual Defendant, by virtue of his or her position as a
17 director and officer, owed to the Company and its shareholders the fiduciary duties
18 of loyalty, good faith, the exercise of due care and diligence in the management
19 and administration of the affairs of the Company, as well as in the use and
20 preservation of its property and assets. The conduct of the Individual Defendants
21 alleged herein involves a violation of their obligations as directors and officers of
22 Facebook, the absence of good faith on their part and a reckless disregard for their
23 duties to the Company and its shareholders that the Individual Defendants were
24 aware, or should have been aware, posed a risk of serious injury to the Company.
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1 The conduct of the Individual Defendants, who were also officers and/or directors
2 of the Company, has been ratified by the remaining Individual Defendants who
3 collectively comprised Facebook's Board.
4

5 21. The Individual Defendants breached their duties of loyalty and good
6 faith by allowing Defendants to cause, or by themselves causing, the Company to
7 misrepresent its financial results and prospects, as detailed herein, and by failing to
8 prevent employees and/or officers of the company from taking such illegal actions.
9

10 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**
11

12 22. In committing the wrongful acts alleged herein, the Individual
13 Defendants have pursued, or joined in the pursuit of, a common course of conduct,
14 and have acted in concert with, and conspired with, one another in furtherance of
15 their common plan or design. In addition to the wrongful conduct herein alleged as
16 giving rise to primary liability, the Individual Defendants further aided and abetted
17 and/or assisted each other in breach of their respective duties.
18
19

20 23. In furtherance of this plan, conspiracy and course of conduct, the
21 Individual Defendants collectively and individually took the actions set forth
22 herein.
23

24 24. The Individual Defendants engaged in a conspiracy, common
25 enterprise and/or common course of conduct that caused the Company to conceal
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1 the true facts that Facebook was misrepresenting the adequacy of its internal
2 controls and violating applicable laws.

3
4 25. Each of the Individual Defendants aided and abetted and rendered
5 substantial assistance in the wrongs complained of herein. In taking such actions
6 to substantially assist the commission of the wrongdoing complained of herein,
7 each Individual Defendant acted with knowledge of the primary wrongdoing,
8 substantially assisted the accomplishment of that wrongdoing, and was aware of
9 his or her overall contribution to and furtherance of the wrongdoing.
10
11

12 SUBSTANTIVE ALLEGATIONS

13
14 26. On February 1, 2012, Facebook filed a Form S-1 registration
15 statement with the SEC. Throughout the next several months, Facebook repeatedly
16 amended the Form S-1.
17

18 27. During the next several months, Facebook employees and
19 underwriters involved in the IPO went on a “roadshow” whereby they had a series
20 of meetings with potential investors. During these roadshows, no Facebook
21 employee ever publicly issued any earnings guidance.
22

23 28. On May 3, 2012, Facebook filed an amended Form S-1 indicating a
24 maximum offering price of \$35 per share and 388 million shares to be sold in the
25 IPO.
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1 29. On May 9, 2012, Facebook issued an amended Form S-1 where it
2 expressed caution about revenue growth due to a rapid shift by users to mobile
3 devices (mobile advertising is generally less lucrative than advertising on desktop
4 computers), stating as follows:
5

6 Based upon our experience in the second quarter of 2012 to date, the
7 trend we saw in the first quarter of DAUs increasing more rapidly
8 than the increase in number of ads delivered has continued. We
9 believe this trend is driven in part by increased usage of Facebook on
10 mobile devices where we have only recently begun showing an
11 immaterial number of sponsored stories in News Feed, and in part due
12 to certain pages having fewer ads per page as a result of product
13 decisions.
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18 30. On May 15, 2012, General Motors announced that it was pulling its
19 advertising business from Facebook, stating that Facebook ads were less effective
20 than other forms of advertising. The withdrawal of General Motors' advertising
21 cost Facebook at least \$10 million in annual revenue.
22

23 31. Despite this negative news, that same day, Facebook raised its
24 expected IPO price to \$34-38 per share, from the previous expectation of \$28-35
25 per share. Facebook also increased the number of shares in the IPO from 388
26 million to 484.4 million shares.
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1 32. Facebook filed its final Form S-1 on May 16, 2012.

2 33. On May 18, 2012, Facebook commenced its IPO at a price of \$38 per
3 share.
4

5 34. Only one day later, on May 19, 2012, Henry Blodget published an
6 article on BusinessInsider.com titled "If This Really Happened During the
7 Facebook IPO, Buyers Should Be Mad As Hell..." The article disclosed rumors
8 that Facebook not only selectively disseminated non-publicly disclosed earnings
9 guidance to its underwriters, but is also subsequently lowered that guidance:
10
11

12 Part way through the Facebook IPO roadshow, scattered reports
13 appeared that Facebook had reduced the earnings guidance it was
14 giving research analysts.
15

16
17
18 This seemed bizarre on a number of levels.
19

20
21 First, I was unaware that Facebook had ever issued any earnings
22 guidance--to research analysts or anyone else.
23

24
25 Earnings guidance is **highly material information** (meaning that any
26 investor considering an investment decision would want to know it).
27

28 It represents a future forecast made by the company. Any time any

1 company gives any sort of forecast, stocks move--because the forecast
2 offers a very well informed view of the future by those who have the
3 most up-to-date information about a company's business.
4

5
6 So if Facebook had issued any sort of guidance, even quietly, this
7 should have been made very public by the company and its bankers--
8 especially because millions of individual investors were thinking of
9 buying the stock.
10
11

12
13 Second, if Facebook really had "reduced guidance" mid-way through
14 a series of meetings designed for the sole purpose of selling the stock
15 this would have been even more highly material information.
16
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19 Why?
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22 Because such a late change in guidance would mean that Facebook's
23 business was deteriorating rapidly--between the start of the roadshow
24 and the middle of the roadshow.
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1 Any time a business outlook deteriorates that rapidly, alarm bells start
2 going off on Wall Street, and stocks plunge.
3

4
5 So the report that Facebook had “reduced earnings guidance” during
6 the roadshow just seemed like a typical misunderstanding between
7 Wall Street and the public--something lost in translation between what
8 a reporter was hearing from sources and what actually made it into
9 print.
10
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12
13 But now Reuters has just reported the same thing again. Here’s a
14 sentence from a story Reuters just published on the IPO:
15

16 Facebook also altered its guidance for research earnings
17 last week, during the road show, a rare and disruptive
18 move.
19

20
21
22 Hmmm.
23

24
25 If this really happened, anyone who placed an order for Facebook who
26 was unaware that 1) Facebook had issued any sort of earnings
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1 guidance, and 2) reduced that guidance during the roadshow, has
2 every right to be furious.
3

4
5 Because this would have been highly material information that some
6 investors had and others didn't--the exact sort of unfair asymmetry
7 that securities laws are designed to prevent.
8

9 [Emphasis in original.]
10

11 35. On May 22, 2012, these fears were confirmed by a REUTERS Article
12 titled "Insight: Morgan Stanley cut Facebook estimates just before IPO" which
13 noted the unusual nature of how, prior to the IPO, three underwriter banks (Morgan
14 Stanley, JPMorgan Chase, and Goldman Sachs) cut their estimates upon the
15 issuance of a revised prospectus on May 9, 2012:
16

17
18 In the run-up to Facebook's \$16 billion IPO, Morgan Stanley, the lead
19 underwriter on the deal, unexpectedly delivered some negative news
20 to major clients: The bank's consumer Internet analyst, Scott Devitt,
21 was reducing his revenue forecasts for the company.
22

23
24
25 The sudden caution very close to Facebook's initial public offering -
26 while an investor road show was under way - was a big shock to
27 some, said two investors who were advised of the revised forecast.
28

1
2 They said it might have contributed to the weak performance of
3 Facebook shares, which sank on Monday and Tuesday - their second
4 and third days of trading – to end more than 18 percent below the IPO
5 price. The \$38-per-share IPO price valued Facebook at \$104 billion.
6
7

8
9 Institutions and major clients generally enjoy quick access to
10 investment bank research, while retail clients in many cases only get it
11 later. It is unclear whether Morgan Stanley only told its top clients
12 about the revised view or spread the word more broadly. The
13 company declined to comment when asked who was told about the
14 research.
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19 The change in Morgan Stanley's estimates came on the heels of a
20 May 9 Facebook filing of an amended prospectus with the U.S.
21 Securities and Exchange Commission, in which the company
22 expressed caution about revenue growth due to a rapid shift by users
23 to mobile devices. Mobile advertising to date has been less lucrative
24 than advertising on desktops.
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1 “This was done during the road show - I’ve never seen that before in
2 10 years,” said a source at a mutual fund firm who was among those
3 called by Morgan Stanley.
4

5
6 JPMorgan Chase and Goldman Sachs, which were also major
7 underwriters on the IPO but had lesser roles than Morgan Stanley,
8 also revised their estimates in response to Facebook’s SEC filing,
9 according to sources familiar with the situation.
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12
13 Morgan Stanley said in a statement that a “significant number” of
14 analysts in the IPO syndicate reduced estimates after Facebook’s
15 May 9 disclosure. The investment bank said its procedures complied
16 with all “applicable regulations.”
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19
20 Devitt did not return phone messages seeking comment. JPMorgan
21 and Goldman declined to comment.
22
23

24
25 Typically, the underwriter of an IPO wants to paint as positive a
26 picture as possible for prospective investors. Investment bank
27 analysts, on the other hand, are required to operate independently of
28

1 the bankers and salesmen who are marketing stocks. That was
2 stipulated in a settlement by major banks with regulators following a
3 scandal over tainted stock research during the dot-com boom.
4

5
6 The people familiar with the revised Morgan Stanley projections said
7 Devitt lowered his revenue estimate for the second quarter and also
8 cut his full-year 2012 revenue forecast.
9

10 * * *

11
12 “That deceleration freaked a lot of people out,” the investor added.
13

14
15 Scott Sweet, senior managing partner at the research firm IPO
16 Boutique, said he was also aware of the reduced estimates.
17

18
19 “They definitely lowered their numbers and there was some concern
20 about that,” he said. “My biggest hedge fund client told me they
21 lowered their numbers right around mid-road show.”
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25 That client, he said, still bought the issue but “flipped his IPO
26 allocation and went short on the first day.”
27
28

1 [Scott] Sweet said analysts at firms that are not underwriting IPOs
2 often change forecasts at such times. However, he said it is unusual
3 for analysts at lead underwriters to make such changes so close to an
4 IPO.
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8 “That would be very, very unusual for a book runner to do that,” he
9 said.
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12 The lower revenue estimate came shortly before the IPO was priced
13 at \$38 a share, the high end of an already upwardly revised projected
14 range of \$34 to \$38, and before Facebook increased the number of
15 shares being sold by 25 percent.
16
17

18
19 “It’s very rare to cut forecasts in the middle of the IPO process,” said
20 an official with a hedge fund firm who received a call from Morgan
21 Stanley about the revision.
22

23 36. On May 22, 2012, Henry Blodget published an article on
24 BusinessInsider.com titled “Facebook Bankers Secretly Cut Facebook’s Revenue
25 Estimates in Middle of IPO Roadshow.” The article explained that it was
26 extraordinarily likely that Facebook secretly, and thus improperly, told
27
28

1 underwriters to cut their estimates in light of new disclosures in the revised
2 prospectus, and that it was highly irregular that the three underwriter banks would
3 cut their estimates unless it was explicitly suggested by Facebook. However,
4 Blodget also noted that the key problem here was the subsequent “selective
5 dissemination” of this nonpublic information to select institutional investors:
6

7
8 But, just as important, news of the estimate cut was passed on only to
9 a handful of big investor clients, not everyone else who was
10 considering an investment in Facebook.
11

12
13 This is a huge problem, for one big reason:
14

15 • Selective dissemination. Earnings forecasts are material
16 information, especially when they are prepared by analysts who have
17 had privileged access to company management. As lead underwriters
18 on the IPO, these analysts would have had much better information
19 about the company than anyone else. So the fact that these analysts
20 suddenly all cut their earnings forecasts at the same time, during the
21 roadshow, and then this information was not passed on to the broader
22 public, is a huge problem.
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1 Any investor considering an investment in Facebook would consider
2 an estimate cut from the underwriters' analysts "material
3 information."
4

5
6 What's more, it's likely that news of these estimate cuts dampened
7 interest in the IPO among those who heard about them. (Reuters
8 reported exactly this--that some institutions were "freaked out" by the
9 estimate cuts, as anyone would have been.)
10
11

12
13 In other words, during the marketing of the Facebook IPO, investors
14 who did not hear about these underwriter estimate cuts were placed at
15 a meaningful and unfair information disadvantage. They did not
16 know what a lot of other investors knew, and they suffered for it.
17
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19
20 Selective dissemination of this sort could be a direct violation of
21 securities laws. Irrespective of its legality, it is also grossly unfair.
22 The SEC should investigate this immediately.
23
24

25
26 We first heard rumblings about this last week, and we were so startled
27 that we assumed the reports were wrong. Then, over the weekend,
28

1 when Reuters reported the basic story again, we said that if it was
2 true, Facebook IPO buyers deserved to be “mad as hell” about it. And
3 now Reuters has the details, and they sound as bad as we had feared.
4

5 37. Later that day, Blodget published another article titled “EXCLUSIVE:
6 Here’s The Inside Story of What Happened On The Facebook IPO.” In the article,
7 Blodget confirmed that a Facebook executive verbally told underwriters about the
8 lowered guidance; these underwriters in turn communicated this nonpublic
9 information to select institutional investors:
10
11

12 The appearance of [language in the revised prospectus concerning
13 decreased ad business as a result of greater use of mobile devices]
14 unnerved some sophisticated investors and analysts, who took it as a
15 sign that Facebook’s business might have deteriorated. The language
16 was vague, however, and it did not make clear that Facebook’s second
17 quarter was weaker than expected. (To infer that message from the
18 language, you had to know that Facebook’s first quarter had been
19 weak-and that the cause had been the divergence between user growth
20 and revenue growth.)
21
22
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26 Soon after Facebook amended its prospectus, all three analysts at the
27 company’s lead underwriters-Morgan Stanley, JPMorgan, and
28

1 Goldman Sachs-cut their estimates for Facebook's Q2 and the full
2 year.

3
4
5 These estimate cuts were conveyed verbally to sophisticated
6 institutional investors.

7
8
9 And, not surprisingly, these investors viewed the estimate cuts as a
10 startling and negative development.

11
12
13 One important question, of course, was why all three underwriter
14 analysts cut their estimates.

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16
17
18 Had they all read the new sentence in the prospectus above and
19 realized that the second quarter was weak? Or had they been tipped
20 off?

21
22
23 It seemed inconceivable that all three analysts could have read the
24 language above and concluded independently that Facebook's Q2 was
25 weak and therefore decided to take the highly unusual step of cutting
26 estimates in the middle of a company's IPO roadshow.
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1
2 More likely, it seemed, someone had directed the analysts to cut their
3 estimates most likely someone with inside knowledge of how
4 Facebook's Q2 was progressing.
5

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7
8 And we have now heard from one source that that is what happened.

9 **One of the underwriter's analysts has said he was told by a**
10 **Facebook financial executive to cut his estimates.**
11

12
13 According to another source with insight into the Facebook IPO
14 process, until the underwriters' analysts cut their estimates, demand
15 for Facebook's stock among sophisticated institutional investors was
16 high. Once these investors heard about the estimate cut, however,
17 they became more cautious about the IPO.
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22 (Again, an estimate cut like this during a roadshow would be hard to
23 interpret as anything but negative. One institutional investor I spoke
24 to said he has looked at more than 1,200 IPOs over the course of his
25 career, and he has never heard of this before. This is especially true
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1 because the underwriter estimates aren't really "estimates"--they're
2 more like company guidance.)

3 [Emphasis added.]
4

5 38. In the article, Blodget further noted that while the negative earnings
6 information, as communicated by the Facebook executive and the underwriters,
7 scared off many of these institutional investors, and many institutional
8 shareholders decided to sell more stock (rather than hold on to it), the price range
9 and size of the deal was increased nonetheless:
10
11

12 The estimate cut, moreover, was followed by three additional pieces of
13 information that were interpreted negatively by some institutional investors:
14

15 1) The price range for the deal was increased, which made
16 the deal even less attractive in light of the estimate cut,
17

18 2) The size of the deal was increased, which meant that
19 more stock would be sold, and
20

21 3) Many smart institutional Facebook shareholders like
22 Goldman Sachs decided to sell more stock on the deal-the
23 "smart money," in other words, was cashing out. Meanwhile,
24 during private roadshow meetings, Facebook executives were
25 reportedly "signaling" to some sophisticated investors that
26 Facebook's advertising revenue would not grow as rapidly as
27
28

1 some potential investors had hoped. Facebook's advertising
2 business is driven primarily by company-to company sales
3 efforts, not by the self-serve ads that drive Google's business.
4 Facebook executives reportedly made clear to sophisticated
5 investors that this would limit the rate at which Facebook's ad
6 business could grow.
7
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11 By the second week of the roadshow, after the estimate cut and
12 price increase, some institutional investors became more
13 cautious about the IPO. According to one investor who looked
14 at the deal, institutions "got the willies" and started to talk
15 about paring back their stock orders.
16
17

18 39. As Blodget explained in this article, while the institutional investors
19 who learned of revised guidance had a lukewarm reaction to Facebook's IPO, the
20 IPO was still in high demand from unwitting investors who were not privy to this
21 non public information. Accordingly, underwriters allocated an
22 uncharacteristically high percentage of the IPO to individual investors:
23
24

25 Meanwhile, out in the real world, demand for Facebook stock was
26 hitting a fever pitch. One senior stockbroker at a major brokerage
27 firm reported that he "had never seen such demand" for an IPO.
28

1
2 These individual investors, needless to say, were not likely aware that
3 the research analysts at the company's lead underwriters had cut their
4 estimates for the company. They were also, presumably, unaware that
5 Facebook's Q2 was weaker than expected.
6

7
8
9 At the end of last week, the time came to decide on the IPO price for
10 Facebook's stock.
11

12
13 This process was handled by Facebook's lead underwriter, Morgan
14 Stanley, and Facebook executives.
15

16
17 According to one source (unconfirmed--this really is just scuttlebutt),
18 based on the book of orders submitted by both institutional and retail
19 investors, Morgan Stanley found that there were two distinct price
20 levels at which investors were interested in buying stock.
21

22
23
24 Institutional investors, having digested the news of the underwriter
25 estimate cut, were comfortable buying Facebook stock at \$32 a share.
26
27
28

1 Retail investors, meanwhile, who were presumably unaware of the
2 estimate cut, were comfortable buying Facebook at \$40 a share.

3
4
5 Knowing that a big percentage of the IPO stock could be sold to retail
6 investors instead of institutional investors, Facebook and Morgan
7 Stanley decided to price the IPO at \$38.
8

9
10 Although the precise allocations could not be learned, a source says
11 that Morgan Stanley allocated a far larger percentage of the Facebook
12 deal to individual investors than is normally the case in an IPO like
13 this.
14
15

16 40. Because a Facebook executive verbally conveyed material
17 information to the underwriters that was not made public, and the underwriters
18 conveyed such material information only to select investors, Facebook potentially
19 violated a number of rules and regulations. Furthermore, this conduct has become
20 front page news that has placed Facebook and its management in a negative light,
21 and has thus brought significant reputational harm to the Company.
22
23
24

25 41. On May 22, 2012, it was also revealed that both the SEC and the
26 Financial Industry Regulatory Authority ("FINRA") were investigating the
27 selective dissemination of material information described above. Furthermore,
28

1 numerous class action lawsuits have been filed against Facebook for the conduct
2 described above.

3 DAMAGE TO FACEBOOK

4
5 42. As a result of the Individual Defendants' conduct, Facebook has
6 exposed itself to litigation and possible governmental or regulatory actions, and
7 has thus exposed itself to millions of dollars, if not tens or hundreds of millions of
8 dollars, in attorneys' fees, fines, and or litigation settlements.
9

10
11 43. Furthermore the Individual Defendants' conduct has caused Facebook
12 significant reputational harm. As stated on Slate.com, in an article titled "One
13 Reason for the Facebook IPO Mess: Zuckerberg Didn't Care":
14

15 True, the company's earlier backers, who were able to unload more
16 than \$10 billion of stock at the highest possible price, may consider
17 the deal worthy of high-fives and Cristal. **But the combination of a**
18 **stock already trading well below its offer price, annoyed retail**
19 **investors - many of them Facebook users - and regulatory probes**
20 **constitutes a botched deal.** And that's without mentioning trading
21 glitches, which were presumably beyond the company's control.
22
23
24
25

26 There's also the impact on Facebook's reputation and morale. **Where**
27 **the Silicon Valley titan was once viewed as a benign force**
28

1 **connecting people, albeit with occasional privacy concerns, it now**
2 **risks being synonymous with Wall Street money-grubbing.**
3 **That's bad for a product dependent on consumers. It's also**
4 **harmful for morale internally and, along with a listless stock**
5 **price, for recruitment.**

6
7
8 [Emphasis added.]

9 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

10 44. Plaintiff brings this action derivatively in the right and for the benefit
11 of Facebook to redress injuries suffered, and to be suffered, by Facebook as a
12 direct result of the breaches of fiduciary duty, abuse of control, gross
13 mismanagement, waste of corporate assets and unjust enrichment, as well as the
14 aiding and abetting thereof, by the Individual Defendants. Facebook is named as a
15 nominal defendant solely in a derivative capacity. This is not a collusive action to
16 confer jurisdiction in this Court that it would not otherwise have.

17
18
19
20 45. Plaintiff will adequately and fairly represent the interests of Facebook
21 and its shareholders in enforcing and prosecuting its rights.

22
23 46. Plaintiff is the owner of Facebook common stock and was the owner
24 of Facebook common stock at all times relevant to the Individual Defendants'
25 wrongful course of conduct alleged herein.
26
27
28

1 47. At the time that this action was commenced, the Board consisted of
2 the following directors: Defendants Mark E. Zuckerberg, James W. Breyer, Peter
3 A. Thiel, Marc L. Andreessen, Erskine B. Bowles, Donald E. Graham, and Reed
4 Hastings.
5

6 48. As a result of the facts set forth herein, Plaintiff has not made any
7 demand on the Board to institute this action against the Individual Defendants.
8 Such demand would be a futile and useless act with respect to each and every one
9 of the Individual Defendants because they are incapable of making an independent
10 and disinterested decision to institute and vigorously prosecute this action for the
11 following reasons:
12
13

14 49. Defendant Zuckerberg is not an independent director because is
15 currently serving as the Company's Chairman and CEO, and before the IPO was a
16 25% owner of Facebook. Immediately after the IPO, Zuckerberg sold 30.2 million
17 shares for \$1.1 billion, and thus had an interest in keeping the IPO price artificially
18 inflated. Accordingly, Zuckerberg is not disinterested and cannot fairly evaluate a
19 demand.
20
21

22 50. Defendant Breyer is a partner at Accel Partners. In May 2005, Breyer
23 invested \$12.7 million in Facebook for a 10.7% ownership stake, and Breyer
24 himself invested an additional \$1 million. Accel and Breyer unloaded 49 million
25 shares in connection with the offering, and thus had an interest in keeping the IPO
26
27
28

1 price artificially inflated. Accordingly Breyer is not disinterested and cannot fairly
2 evaluate a demand.

3
4 51. Defendant Thiel was an early Facebook investor through his Founders
5 Fund venture capital firm, and before the IPO had a 3% stake in Facebook.
6 Immediately after the IPO, Thiel sold \$16.8 million shares for \$633 million, and
7 thus had an interest in keeping the IPO price artificially inflated. Accordingly,
8 Thiel is not disinterested and cannot fairly evaluate a demand.
9

10
11 52. Defendant Bowles sits on the board of Morgan Stanley, the lead
12 underwriter that improperly and selectively disseminated nonpublic information it
13 received from a Facebook executive. As a result, Morgan Stanley is subject to
14 litigation and regulatory and governmental investigations. Bowles cannot be
15 expected to take any action, on behalf of Facebook, that would harm Morgan
16 Stanley. Accordingly, Bowles is not disinterested and cannot fairly evaluate a
17 demand.
18
19

20
21 53. Defendant Andreessen is conflicted because he is co-founder of
22 venture capital firm Andreessen Horowitz, which had a significant private
23 investment in Facebook before it went public. Andreessen Horowitz also made
24 \$78 million from a \$250,000 seed investment in Instagram, a company that was
25 recently acquired by Facebook for \$1 billion. The FTC is reportedly investigating
26
27
28

1 this acquisition. Accordingly, Andreessen is not disinterested and cannot fairly
2 evaluate a demand.

3
4 54. Defendant Graham is the CEO of The Washington Post Company.
5 THE WASHINGTON POST is a major advertiser with Facebook,: from 2009
6 through 2011, The Washington Post spent \$9.6 million on Facebook ads. THE
7 WASHINGTON POST is also affiliated with SocialCode, an ad agency whose
8 clients do business with Facebook. Accordingly, Graham is not disinterested and
9 cannot fairly evaluate a demand.
10

11
12 55. Defendant Hastings is CEO of Netflix, a major advertiser with
13 Facebook: from 2009 through 2011, Netflix spent \$7.3 million on Facebook ads.
14 Accordingly, Hastings is not disinterested and cannot fairly evaluate a demand.
15

16 56. Furthermore, Defendant Zuckerberg is on the nominating committee,
17 the committee that determines the composition of the board. Because Zuckerberg
18 is on this committee, he has significant control of the composition of the board,
19 and can either entrench the current members that act in accordance with his wishes,
20 or appoint new members to do his bidding. For this reason as well, the whole
21 board is not disinterested and cannot fairly evaluate a demand.
22
23

24
25 57. Furthermore, each Individual Defendant signed, or directed their
26 signature, on the registration statements at issue. For this reason as well, the whole
27 board is not disinterested and cannot fairly evaluate a demand.
28

1 58. In fact, an article on THE WALL STREET JOURNAL'S blog, titled
2 "Facebook Board Raises Eyebrows," dated February 2, 2012, quoted Columbia
3 Law School Professor John Coffee as stating that "[p]retending that Facebook will
4 have an independent board...is like putting rouge on a corpse." Coffee stated that
5 Facebook's board has made "a brazen insistence that they are not going to let Wall
6 Street impose their rules" concerning the seating of a truly independent board.
7

8
9 **COUNT I**

10 **(AGAINST THE INDIVIDUAL DEFENDANTS**
11 **FOR BREACH OF FIDUCIARY DUTY)**
12

13 59. Plaintiff incorporates by reference each of the preceding paragraphs
14 as though they were set forth in full herein.
15

16 60. The Individual Defendants owed a fiduciary duty to Facebook to
17 supervise the issuance of the news concerning the company's financial condition or
18 prospects, and ensure that such issuance was not done in violation of applicable
19 laws or regulations. Additionally, by reason of their positions as directors, officers
20 and controlling shareholders of Facebook, the Individual Defendants owed
21 Facebook and its stockholders fiduciary duties of care, loyalty, candor, good faith
22 and fair dealing.
23

24
25 61. As fiduciaries, to discharge these duties, the Individual Defendants
26 were required to exercise prudent supervision over management, policies,
27 practices, controls, and financial and corporate affairs of Facebook.
28

1 62. The Individual Defendants, however, breached their fiduciary duties
2 by failing to properly supervise and monitor the adequacy of Facebook's internal
3 controls and by allowing the Company to issue material financial information only
4 to select entities, in violation of applicable laws or regulations.
5

6 63. Defendants have engaged in a sustained and systematic failure to
7 exercise their oversight responsibilities and to ensure that Facebook complied with
8 applicable laws, rules, and regulations.
9

10 64. As members of the Board, the Individual Defendants were directly
11 responsible for authorizing, permitting the authorization of, or failing to monitor
12 the practices that resulted in violations of applicable laws as alleged herein. Each
13 of them had knowledge of and actively participated in, approved, and/or
14 acquiesced in the wrongdoing alleged herein or abdicated his or her responsibilities
15 with respect to this wrongdoing. The alleged acts of wrongdoing have subjected
16 the Company to unreasonable risks of loss and expenses.
17

18 65. Each of Defendants' acts in causing or permitting the Company to
19 disseminate material misrepresentations and omissions to the investing public and
20 abdicating his or her oversight responsibilities to the Company have subjected the
21 Company to liability for violations of applicable laws and regulations, and
22 therefore were not the product of a valid exercise of business judgment. Rather
23 their acts constituted a complete abdication of their duties as officers and/or
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1 directors of the Company. As a result of Defendants' breaches, the Company's
2 reputation in the business community and financial markets has been irreparably
3 tarnished.
4

5 **COUNT II**

6 **(AGAINST THE INDIVIDUAL DEFENDANTS**
7 **FOR GROSS MISMANAGEMENT)**

8
9 66. Plaintiff incorporates by reference each of the preceding paragraphs as
10 though they were set forth in full herein.

11 67. Defendants had a duty to Facebook and its shareholders to prudently
12 supervise, manage, and control the operations, business, and internal financial
13 accounting and disclosures of the Company. Defendants, however, by their actions
14 and by engaging in the wrongdoing alleged herein, abandoned and abdicated their
15 responsibilities and duties with regard to prudently managing the business of
16 Facebook in a manner consistent with the duties imposed upon them by law. By
17 committing the misconduct alleged herein, Defendants breached their duties of due
18 care, diligence, and candor in the management and administration of Facebook's
19 affairs.
20
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24 68. During the course of the discharge of their duties, Defendants were
25 aware of the unreasonable risks and losses associated with their misconduct.
26 Nevertheless, Defendants caused Facebook to engage in the scheme described
27 herein which they knew had an unreasonable risk of damage to the Company, thus
28

1 breaching their duties to the Company. As a result, Defendants grossly
2 mismanaged Facebook, thereby causing damage to the Company.

3
4 **COUNT III**

5 **(AGAINST THE INDIVIDUAL DEFENDANTS**
6 **FOR CONTRIBUTION AND INDEMNIFICATION)**

7 69. Plaintiff incorporates by reference each of the preceding paragraphs as
8 though they were set forth in full herein.

9
10 70. Facebook is alleged to be liable to various persons, entities and/or
11 classes by virtue of the facts alleged herein that give rise to Defendants' liability to
12 the Company.

13
14 71. Facebook's alleged liability on account of the wrongful acts,
15 practices, and related misconduct alleged arises, in whole or in part, from the
16 knowing, reckless, disloyal and/or bad faith acts or omissions of Defendants, and
17 the Company is entitled to contribution and indemnification from each defendant
18 in connection with all such claims that have been, are, or may in the future be
19 asserted against Facebook, by virtue of the Individual Defendants' misconduct.

20
21
22 **COUNT IV**

23
24 **(AGAINST THE INDIVIDUAL DEFENDANTS**
25 **FOR ABUSE OF CONTROL)**

26 72. Plaintiff incorporates by reference each of the preceding paragraphs as
27 though they were set forth in full herein.

1 73. The Individual Defendants' conduct, as alleged herein, constituted an
2 abuse of their control over Facebook.

3
4 74. As a direct and proximate result of the Individual Defendants' abuse
5 of control, the Company has suffered, and will continue to suffer, damages for
6 which the Individual Defendants are liable. Plaintiff, moreover, has no adequate
7 remedy at law
8

9 **COUNT V**

10 **(AGAINST THE INDIVIDUAL DEFENDANTS**
11 **FOR WASTE OF CORPORATE ASSETS)**
12

13 75. Plaintiff incorporates by reference each of the preceding paragraphs as
14 though they were set forth in full herein.

15
16 76. The Individual Defendants' conduct, as alleged herein, constituted a
17 waste of the corporate assets of Facebook.

18
19 77. As a direct and proximate result of the Individual Defendants' abuse
20 of control, the Company has suffered, and will continue to suffer, damages for
21 which the Individual Defendants are liable. Plaintiff, moreover, has no adequate
22 remedy at law.
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff prays for judgment as follows:
26

27 a. Against all of the Individual Defendants and in favor of the
28

1 Company for the amount of damages sustained by the Company as a result of the
2 Individual Defendants' breaches of fiduciary duties;

3 b. For an order setting an emergency shareholder vote date for
4 election of new directors;

5 c. Directing Facebook to take all necessary actions to reform and
6 improve its corporate governance and internal control procedures so that they
7 comply with relevant laws;

8 d. Awarding to plaintiff the costs and disbursements of the action,
9 including reasonable attorneys' fees, accountants' and experts' fees, costs, and
10 expenses; and

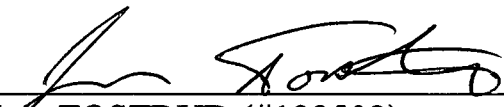
11 e. Granting such other and further relief as the Court deems just and
12 proper.

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18 **JURY TRIAL DEMAND**

19 Plaintiff hereby demands a trial by jury.

20 Dated: July 5, 2012

21 TOSTRUD LAW GROUP, P.C.

22
23 By: 
24 JON A. TOSTRUD (#199502)
25 1901 Avenue of the Stars, Suite 200
26 Los Angeles, CA 90067
27 Telephone: (310) 278-2600
28 Facsimile: (310) 278-2640
E-mail: jtostrud@tostrudlaw.com

Attorneys for Plaintiff

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EXHIBIT A

**SWORN CERTIFICATION OF PLAINTIFF
FACEBOOK, INC. SECURITIES LITIGATION**

I, Yunae Chi, certify that:
(Please print your name)

1. I have reviewed the Complaint and authorized its filing.
2. I did not purchase Facebook, Inc., the security that is the subject of this action, at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions in Facebook, Inc. during the Class Period set forth in the Complaint are as follows:

I bought 400 shares on 5/18/12 at \$ 40.06 per share

I bought 50 shares on 5/18/12 at \$ 38.16 per share

I bought _____ shares on ____/____/____ at \$ _____ per share

I bought _____ shares on ____/____/____ at \$ _____ per share

I sold _____ shares on ____/____/____ at \$ _____ per share

I sold _____ shares on ____/____/____ at \$ _____ per share

I sold _____ shares on ____/____/____ at \$ _____ per share

(List additional transactions on separate page if necessary)

5. I have not served as a representative party on behalf of a class under this title during the last three years.
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court, including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury that the foregoing are true and correct statements.

Date: 6/19/12


(Please sign your name above)

EXHIBIT B

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Yunae Chi, Derivatively on Behalf of Herself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff **Orange County, California**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jon A. Tostrud

Tostrud Law Group, PC., 1901 Avenue of the Stars, 2nd Fl., Los Angeles, CA. 90067, Tel: (310) 278-2600

DEFENDANTS

Mark E. Zuckerberg, James W. Breyer, Peter A. Thiel, Marc L. Andreessen, Erskine B. Bowles, Donald E. Graham, Reed Hastings, and Facebook, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)(1)

Brief description of cause:
Verified Shareholder Derivative Complaint

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE 07/05/2012

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. In accordance with Civil L.R. 3-2(c) - (f), select the appropriate venue based upon the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.

Date and Attorney Signature. Date and sign the civil cover sheet.